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Recent Development on Environmental Policy and Law in Turkey

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1. Introduction

Problems with regard to parliamentary democracy and the rule of law occurred, particularly, under the state of emergency regime established just after the 16 July Coup D'état attempt in 2016 caused negative consequences in terms of environmental policy and law too. Derogations from the strict requirements of environmental legislation through the repeal process of the existent regulations, noncompliance with or inefficient implementation of the existent legislation, relying on repressive tactics against environmentalists including local people who protests the governmental acts and decisions regarding the construction of installations that have serious adverse effects on the environment, prohibition of meetings and protests organized by NGOs and local people against the construction of nuclear power plants by the governors of the related provinces are among such consequences.

2. Legislative and policy developments related to the environment

a. Nuclear power plants

Decisive efforts of the ruling AKP government to proceed the construction of three nuclear power plants have being the leading issue on the political agenda¹. The additional official steps have been gradually taken following the signature of the first agreement on 12 May 2010 between the governments of the Republic of Turkey and of the Russian Federation on the establishment and operation of the first nuclear power plant (NPP) at *Akkuyu* located in *Mersin* province in the Eastern Mediterranean Region of Turkey. The final report regarding the environmental impact assessment for the construction of *Akkuyu* NPP had approved by the Ministry of Environment and Urbanization in 2016 in spite of serious controversies in terms of both legal aspects and financial benefits of Turkey as well as pending cases with regard to the issue. As a following step the construction license is granted for the first unit of that power station, and consequently the official ground-breaking ceremony for the construction is performed by the Turkish and Russian heads of state on March 2018. Indeed this is the second ceremony for the same construction process because the first one had completed on December 2017. Under these legal and practical facts the situation is considered among NGOs as

¹For a critical analysis made by MMO (Mechanical Engineers Chamber) on planned nuclear power stations see *Türkiye'nin Enerji Görünümü 2018 (Energy Appearances of Turkey)*, April 2018 Ankara, p.310-319. <https://www.mmo.org.tr/kitaplar/turkiyenin-enerji-gorunumu-2018/reached> on 20 April 2018. For a detailed information about the history of the projects for nuclear power development and related legal framework in a descriptive context written in English see IEA (International Energy Agency), *Energy Policies of IEA Countries Turkey 2016 Review*, p 181-190. <https://www.iea.org/publications> (reached on 15 March 2018).

“politicization of the process” regarding the construction of the first nuclear power plant of the Country in accordance with the relations between Turkey and Russia².

As regard to the second nuclear power plant that will be constructed in *Sinop* located in the southern edge of the Black Sea under the cooperation between Turkey and Japan based on the signature of the initial agreement on 3 May 2013, feasibility studies for the construction, and negotiations of implementing agreements are ongoing.

For the third nuclear power plant that will be constructed under the cooperation between Turkey and China, *İğneada* in *Kırklareli* province, a district on the northwestern coast of the Black Sea is selected, and the review and assessment of the development report prepared for the project is in progress. It should be noted that *İğneada* has a specific ecosystem covering the biggest flood forest in both Turkey and Europe.

b. Thermic power plants

The incumbent government’s policy on energy does not completely in line with its international obligations under the climate agreements. Therefore thermic power plants are still placed among the energy options within the general energy policy, and the Government continues to grant licenses for these plants. It is indicated in a report that projects for nearly 50 thermic power plants are planned despite majority of increasing greenhouse gas emissions of Turkey derived from these plants³. Besides, decisions for site selection regarding some of these power plants are not adequate because they ignore the special characteristics of the related agricultural areas and/or other significant elements of the environment.

c. Hydropower plants

The decisive efforts of the Government regarding the construction of hydropower plants are ongoing in accordance with its main goal outlined in the policy documents prepared in the previous years. Through these documents hydropower plants had given a significant place among energy policy of the Government. Indeed the goal regarding “using all potential hydropower by 2023 through the private sector under the free market conditions” had been clearly stated in these documents⁴. Following the relevant public institutions have been authorized with special powers through enacting several regulations on the issue. To put it shortly, the political choice has been made by given priority to development over environmental protection. Therefore, there are many problems as improper site selection, inadequate environmental impact assessment reports in terms of both the assessment of

² MMO cited in footnote 1.

³ÇMO (Çevre Mühendisleri Odası), “Kömürlü Termik Santrallerin Mevcut Durum Analizi Raporu”, 29.05.2017 (Environment Engineers Chamber: Report on the Analysis of the Current Place of Thermic Power Plants), p. 4,13-14. www.cmo.org.tr/odamiz.raporlar.php (reached on 15 March 2017).

⁴ See for instance, Enerji ve Tabii Kaynaklar Bakanlığı, *Mavi Kitap* Ankara 2012 (Ministry of Energy and Natural Resources, *Blue Book*). www.enerji-gov.tr (reached on 25 October 2013); Çevre ve Şehircilik Bakanlığı, İklim Değişikliği Eylem Planı 2011-2023 (Ministry of Environment and Urbanization, *Climate Change Action Plan*), Ankara 2011. www.csb.gov.tr/dokumanlar-1-101 (reached on 20 September 2012).

adverse impacts and protective measures as well as inefficient monitoring and enforcement let alone noncompliance with the decisions of the courts⁵.

d. Legislation with regard to obligations of Turkey under the EU and international relations

As regard to multilateral agreements the Council of Ministers approved the ratification of the Doha Amendment to the Kyoto Protocol after the Parliament passed a law to enable the ratification (Decision no 2017/10761, *Resmi Gazete*: 2 October 2017). Therefore the Doha Amendment become a part of the national legislation in accordance with Article 90 of the Constitution. The same process was proceeded for the ratification of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Decision no 2017/10427, *Resmi Gazete*: 1 August 2017). Additionally, the By-law on Fluorine greenhouse Gas Emissions was published to comply with both the United Nations Framework Convention on Climate Change and the Kyoto Protocol (*Resmi Gazete*: 4 January 2018). However certain prohibitions specified in the provisionary article 2 of this by-law will enter into force in upcoming years as 2019, 2020 and 2022.

As regard to transposition of the EU environmental legislation in the context of the EU -Turkey relations, the European Commission has published “Turkey 2018 Report” on April 17, 2018⁶. This report first indicates the areas on that no progress or little progress was made over the past year in terms of completion the alignment with the EU directives on environment. Directives with regard to industrial pollution and risk management, nature protection, water management, and emission trading are among those areas. Second the Report reiterates some recommendations in the previous (2016) report as ensure the Environmental Impact Assessment Directive is effectively and correctly implemented, the ratification the Paris Climate Agreement on climate change is completed and Turkey’s contribution to this is implemented. As regard to transposition of these cited EU environmental legislation into national law, consultation process is still ongoing on two draft laws that prepared in the previous years to transpose the Water Framework Directive and Natura 2000 regulation. The same is true for the draft by-law prepared to transpose the EU Industrial Emission Directive.

3. Public protests and legal cases

a. Public concerns: Intensive and longstanding protests of local public and NGOs have been ongoing against the above mentioned policies and actions of the Government regarding particularly the construction of nuclear, thermic and hydropower plants as well as mining activities since the first official steps are taken on these issues. Strong protests and serious concerns have been put forward during the consultation and public participation process under the environmental impact assessment procedure with regard to the proposed power plants and mining investments. The main common objection for all proposed investments is the approval of applications by the competent authorities in

⁵ These and associated problems are discussed by the Author of these lines in two articles written in Turkish. See “Hidroelektrik Santral (HES) Politikası Geleceğimizi Tehdit Ediyor” (“The Hydropower Plant Policy Threatens Our Future”). *Cumhuriyet, Bilim-Teknoloji* 17 Mayıs 2013. “Hidroelektrik Santral Politikasının Çevre Hukuku Açısından Sorgulanması” (“Challenging the Hydropover Policy in Terms of Environmental Law”). *Prof. Dr. Nevzat Toroslu’ya Armağan*, cilt II, Ankara 2015, p.1233-1272.

⁶ *Commission Staff Working Document*, Strasbourg, 17.4.2018 SWD(2018) 153 final. www.ab-ilan-com/wp-content/uploads/2018704/20180417-turkey-report.pdf (reached in 19.04 2018).

spite of the inadequate EIA reports prepared for the relevant development projects. Consequently the legality of these decisions were challenged by the NGOs and local citizens before the administrative courts. Nevertheless the attitude and judgments of that courts are not predictable, and are also not in conformity with each other because the situation changes according to the place and nature of the proposed project as well as the background and changing attitude of the relevant judges according to political atmosphere. Therefore, in similar cases, while one first degree court decides in favor of plaintiff, the other one judges in favor of investor and the Government. The same is true for the supreme administrative court (*Danıştay*).

In terms of *Akkuyu* nuclear power plant, several legal applications with regard to various licenses given by the competent ministries such as construction license, preliminary license and consent for the environmental impact assessment report for the first unit were brought before the administrative courts by NGOs and local public.

b. Akkuyu case: In the case brought to annul the consent given for the EIA report for *Akkuyu* nuclear power plant, the inadequacy of the report, particularly in terms of the control, management, storing and disposal of nuclear wastes apart from other licenses is challenged before the competent administrative courts by NGOs and local citizens through several applications. However a chamber of the supreme administrative court (*Danıştay*) (the Court) rejected these claims on a ground that can be considered unusual in terms of judicial control. The court, indeed accepted the inefficiencies in the EIA report however reasoned that these will not cause invalidity of the report and would be completed in the preliminary security analysis report that will be submitted to the Turkish Atomic Energy Institution in a following step. It is obvious that there is a legal inconsistency between the reasoning based on the evaluation of the facts on the case and the verdict reached⁷. Such a conclusion confirms the arguments regarding politicizing the process under the relations with Russia. Indeed, just one day before the Court reached this decision the President has declared that the construction of *Akkuyu* nuclear power plant will be proceeded against all objections. Following the Court's judgment, the plaintiffs have appealed the decision before the Administrative Chambers Council, and currently the case is pending. Despite that the Government granted the construction license and held the above mentioned ceremony for the construction.

⁷ Danıştay 14. Daire. E. 2014/11695. K.2017/6248. 23.11.2017.